

Tax Map/Block/Parcel  
No. 74-13-615

Building Permit/Zoning  
Certificate No. 96-3582

Case 4190

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

**APPELLANT:** Carrolltown Center Development Co., LLC  
c/o Black Rock Associates  
Suite #9  
6400 Ridge Road  
Eldersburg, Maryland 21784

**ATTORNEY:** J. Brooks Leahy, Esquire  
Dulany & Leahy, LLP  
127 East Main Street  
P. O. Box 525  
Westminster, Maryland 21158

**REQUEST:** An appeal of the Zoning Administrator's denial of reduction in the number of required parking spaces from 1,734 to 1,722 in order to permit a seasonal outdoor pool and garden center

**LOCATION:** Liberty Road and Ridge Road intersection on property zoned "B-L" Local Business District in Election District 5

**BASIS:** Article 17, Section 17.2(a); Ordinance 1E (The Carroll County Zoning Ordinance)

Carrolltown Center Development Co., LLC, filed an application for a variance of the requirements of Section 14.1 of the Carroll County Zoning Ordinance to reduce the required parking spaces at the subject location to permit a seasonal outdoor pool and garden center to be utilized by a tenant of the applicant.<sup>1</sup>

The facts before the Board are not in dispute. The applicant is the owner of Carrolltown Center, a planned business center which leases space to tenants. The center has been redeveloping and is seeking tenants for some vacant space and working with existing tenants to improve their space. Recently, North American Marketing Company (Namco) signed a lease to rent a portion of the former Ace Hardware Store, a current tenant.

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<sup>1</sup>The application was also an appeal of the Zoning Administrator's denial of requested variance. Such appeals are a de novo hearing before this Board. (See Article 17, Section 17.2(a))

Namco, a recent arrival to the Baltimore area, is a seasonal, outdoor merchandiser (See Applicant's Exhibit 1 for a partial list of the types of merchandise it sells). A significant portion of its sales (approximately 30 - 35%) is through aboveground pools. The applicant is seeking the variance to permit it to lease an outside area 55' x 65' to Namco for Namco's outdoor display area. Applicant's Exhibits 3 and 4 are renditions of how the area is anticipated to be utilized.

The area will be enclosed by chain link fence with wood slat inserts. It will be used to display the aboveground pools and other seasonal merchandise including: flowers, shrubs, trees, park benches, gazebos, screen houses, etc.<sup>2</sup> The outdoor display area lies in the parking lot of the center. The outdoor display area would be open from early spring through the fall. In support of the request, the applicant represented to the Board that the area in question is underutilized and is hardly used for parking.

The hardship alleged by the applicant is that absent approval of the variance, Namco may not extend its lease after its current one year commitment expires.

The applicant had applied to the zoning administrator for the variance pursuant to Section 15.5.1. The Zoning Administrator denied the request, and the applicant filed the instant appeal. For the following reason the Board will deny the applicant's request for a variance.

#### The Variance

We begin our discussion by a review of the applicable law. "The Board may grant a variance only in cases where the strict compliance with the terms of the ordinance would result in practical difficulty or unreasonable hardship which have not been caused by the applicant or the applicant's predecessor in title. . ." Section 15.5.4(d); Ordinance 1E. A variance is defined in Section 20 of the ordinance as ". . .a relaxation of the terms of the zoning ordinance in accordance with Sections 15.0, 15.2 and 17.2 where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the ordinance would result in practical difficulty or unreasonable hardship." (Emphasis added). The definition requires both "conditions peculiar to the property" and "practical difficulty or unreasonable hardship". It is clear by the language, the initial factor of the ordinance is that the property poses unique qualities. It is only when unique

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<sup>2</sup>For a complete list of items, see Applicant's Exhibit #1 and 4.

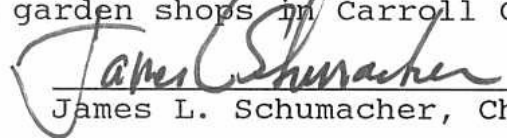
qualities are established that we then concern ourselves with whether practical difficulty or unreasonable hardship exists resulting from the disproportionate impact of the ordinance caused by the property's uniqueness. (See Cromwell v. Ward 102 Md. App. 601 at 695 (1995)).

The record before the Board reflects that the property is ordinary and not unique. The effect of the ordinance on the property causes no disproportionate adverse impact on the applicant. Furthermore, any hardship or difficulty alleged is minimal and is the result of the actions of the applicant. Accordingly, the request for the variance is denied.

While this may resolve the matter, it is important to address the issue of what may properly be displayed outside in this zone. The Board adopts the Zoning Administrator's interpretation regarding this matter. The Business Local Zoning requires all business services, or processing to be conducted wholly within a completely enclosed building, except for ...garden shops. (See Section 10.4(a)). Pools are not customarily sold or displayed in garden shops in Carroll County.

3.6.97

Date

  
James L. Schumacher, Chairman

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March 6, 1997